

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 97-0043 ITC
Indiana Corporation Income Tax
For The Tax Periods: 1990 through 1992**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. **Indiana Gross Income Tax**: Inter-company Sales

Authority: IC 6-8.1-5-1

Taxpayer protests the Department's inclusion of inter-company sales in gross income.

II. **Indiana Gross Income Tax**: Proceeds from Asset Sales

Authority: IC 6-8.1-5-1

Taxpayer protests the Department's inclusion of proceeds from asset sales in gross income.

III. **Indiana Adjusted Gross Income Tax**: State Income Tax

Authority: IC 6-3-1-3.5; IC 6-8.1-5-1

Taxpayer protests the amounts of state income tax used to calculate gross income tax.

IV. **Indiana Adjusted Gross Income Tax**: Interest Income from U.S. Obligations

Authority: IC 6-3-1-3.5

Taxpayer protests amount of interest income included in adjusted gross income.

V. **Indiana Adjusted Gross Income Tax**: Qualifying Dividend Deduction

Taxpayer protests the Department's adjustment regarding qualifying dividend deduction.

VI. **Indiana Adjusted Gross Income Tax**: Federal Taxable Income Adjustment

Authority: IC 6-8.1-5-1

Taxpayer protests the Department's federal taxable income adjustment.

VII. **Indiana Adjusted Gross Income Tax**: Non-business Income

Authority: IC 6-3-1-20, IC 6-8.1-5-1, 45 IAC 3.1-1-29.

Taxpayer protests the Department's determination regarding business or non-business income.

VIII. **Indiana Adjusted Gross Income Tax**: Payments

Authority: IC 6-8.1-5-1

Taxpayer protests certain payments that were not refunded.

IX. **Indiana Gross Income Tax**: Out-of-State Sales

Authority: IC 6-2.1-2-2, 45 IAC 1-1-49, 45 IAC 1-1-120

Taxpayer protests the Department's inclusion of certain wholesale sales in gross income.

STATEMENT OF FACTS

Taxpayer is an international corporation engaged in the production and distribution of computers and computer equipment. Two hearings have been conducted in an attempt to resolve taxpayer's protest. The Department has requested certain documents to substantiate a number of taxpayer's claims. However, taxpayer has not provided the requested documentation on several issues. This Letter of Findings is based upon the Department's discussion with taxpayer at hearings, the information contained in the file, taxpayer's written brief, and the auditor's extensive notes in response to issues raised in taxpayer's original protest.

I. **Indiana Gross Income Tax**: Intercompany Sales

DISCUSSION

Taxpayer protests receipts included in gross income. Taxpayer argues that certain receipts represented inter-company sales. In taxpayer's written brief, an exhibit is provided with a highlighted portion that taxpayer claims were non-taxable receipts because taxpayer was a member of an affiliated group. However, taxpayer has not

provided documentation to substantiate that these sales were in fact “inter-company sales.”

“The notice of proposed assessment is *prima facie evidence* that the department’s claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1 (emphasis added). Taxpayer has not provided sufficient documentation to rebut the Department’s assessment.

FINDING

Taxpayer’s protest is denied.

II. Indiana Gross Income Tax: Proceeds from Asset Sales

DISCUSSION

Taxpayer protests proceeds from asset sales included in gross income. The auditor relied on information supplied by the taxpayer to make this adjustment. The Department requested documentation from taxpayer to support its contention that it did not make the amount of sales assessed in the audit. “The notice of proposed assessment is *prima facie evidence* that the department’s claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1 (emphasis added). Taxpayer has not provided sufficient documentation to rebut the Department’s assessment.

FINDING

Taxpayer’s protest is denied.

III. Indiana Adjusted Gross Income Tax: State Income Tax

DISCUSSION

Taxpayer protests the Department’s addback of certain state taxes. Taxpayer argues that certain tax amounts were added back that were not based on income. The Department requested documentation from taxpayer to support its contention. However, taxpayer failed to present any information to support its contention that certain state taxes were erroneously added back. “The notice of proposed assessment is *prima facie evidence* that the department’s claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1 (emphasis added). Taxpayer has not provided sufficient documentation to rebut the Department’s assessment.

FINDING

Taxpayer's protest is denied.

IV. **Indiana Adjusted Gross Income Tax**: Interest Income from U.S. Obligations

DISCUSSION

Taxpayer protests the Department's disallowance of certain interest income for the tax years at issue. Taxpayer argues that the following two types of interest income should have been deducted: (1) U.S. Treasury Notes and Bills and (2) Installment sales to the U.S. Government.

The Department finds that interest on U.S. Treasury Notes and Bills should be allowed as a modification against federal taxable income; however, installment sales made to the US Government should not be allowed.

FINDING

Taxpayer's protest is sustained in part and denied in part.

V. **Indiana Adjusted Gross Income Tax**: Qualifying Dividend Deduction

DISCUSSION

Taxpayer protests the Department's disallowance of a certain deduction. Taxpayer argues that the Department disallowed a qualifying dividend deduction. The Department agrees that an adjustment should have been made for the special deduction. However, the exact adjustment will be made during the supplemental audit.

FINDING

Taxpayer's protest is sustained subject to audit verification.

VI. **Indiana Adjusted Gross Income Tax**: Federal Taxable Income Adjustment

DISCUSSION

Taxpayer protests an adjustment made to federal taxable income. The Department requested that taxpayer provide documentation to support its contention that such adjustments were made in error. "The notice of proposed assessment is *prima facie evidence* that the department's claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed

assessment is made.” IC 6-8.1-5-1 (emphasis added). Taxpayer did not provide sufficient documentation to support its position.

FINDING

Taxpayer’s protest is denied.

VII. Indiana Adjusted Gross Income Tax: Non-business Income

DISCUSSION

IC 6-3-1-20 defines business income. Taxpayer argues that it was taxed for capital gains that had situs in another state. The Taxpayer was assessed adjusted gross income tax on the sale of real property which Taxpayer characterized as non-business income. The audit characterized the income as business income. Business income is defined as income from transactions and activity in the regular course of the taxpayer’s trade or business. 45 IAC 3.1-1-29. “Non-business income means all income other than business income.” *Id.*

The Taxpayer did not provide documentation to support its assertion. “The notice of proposed assessment is *prima facie evidence* that the department’s claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1 (emphasis added). Taxpayer did not submit documentation to support its contention.

FINDING

Taxpayer’s protest is denied.

VIII. Indiana Adjusted Gross Income Tax: Payments

DISCUSSION

Taxpayer protests a payment that was not credited toward its Indiana Corporate Income Tax. During the audit, the auditor relied on departmental records in calculating the credits. The Department’s records indicate that Taxpayer received a refund, which included this credit. Taxpayer has not provided documentation to show that the figures are in error. “The notice of proposed assessment is *prima facie evidence* that the department’s claim for unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” IC 6-8.1-5-1 (emphasis added). Taxpayer did not provide documentation to support this contention.

FINDING

Taxpayer's protest is denied.

IX. Indiana Gross Income Tax: Out-of-State Sales

DISCUSSION

Taxpayer sold computers to Company A (an out-of-state corporation) who maintained a warehouse in Indiana. Taxpayer shipped these computers from an out-of-state location to Company A's warehouse in Indiana. Audit proposed assessments of gross income tax on the proceeds from these sales.

Gross income tax is imposed upon the receipt of taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer. IC 6-2.1-2-2. Income is not subject to the Indiana income tax unless the seller was engaged in business activity within the State and such activity was connected with or facilitated the sales. 45 IAC 1-1-120.

Business Situs Defined. For purposes of these regulations [45 IAC 1-1], a taxpayer may establish a "business situs" in ways including, but not limited to, the following:

- (1) Use, occupancy or operation of an office, shop, construction site, store, warehouse, factory, agency route or other place where the taxpayers affairs are carried on;
- (2) Performance of services;
- (3) Maintenance of an inventory or stocks of goods for sale, distribution or manufacture;
- (4) Sale or distribution of merchandise from company-owned vehicles where title to the goods passes at the time of sale or distribution;
- (5) Acceptance of orders without the right of approval or rejection in another state;
- (6) Ownership, leasing, rental or other operation of income-producing property (real or personal); or
- (7) Certain activities of resident salesmen.

....

45 IAC 1-1-49

During the audit period, Taxpayer maintained a repair facility in Indiana. Taxpayer states that this facility did not manufacture computers or related items and that Taxpayer did not maintain a warehouse for computers in Indiana. Taxpayer also has sales employees in Indiana; however, Taxpayer claims they do not handle these accounts. Taxpayer has established a business situs. Thus, we turn to see whether the business activity in Indiana was connected with or facilitated the sales.

45 IAC 1-1-120(1)(b) describes a nontaxable in-shipment as; “[s]ales made by a nonresident who has a business situs or business activities within the State, but the situs or activities are not significantly associated with the sales, and the goods are shipped directly to the buyer upon receipt of a prior order.”

Taxpayer points out that the contested transactions were characterized as “house account” sales. Taxpayer notes that its sales to Company A were conducted entirely between Taxpayer’s California facility and Company A’s California facility. That is, Taxpayer’s California office accepted all orders and performed all the necessary steps to complete the sale. Taxpayer provided the Department with a memorandum from its Marketing Manager stating that the Indiana personnel were not involved with the solicitation, negotiation or execution of sales to Company A and the Indiana personnel did not perform any post-sales or other ancillary activities in regard to these sales. However, Taxpayer has failed to provide any documentation to support these statements.

FINDING

Taxpayer’s protest is respectfully denied.